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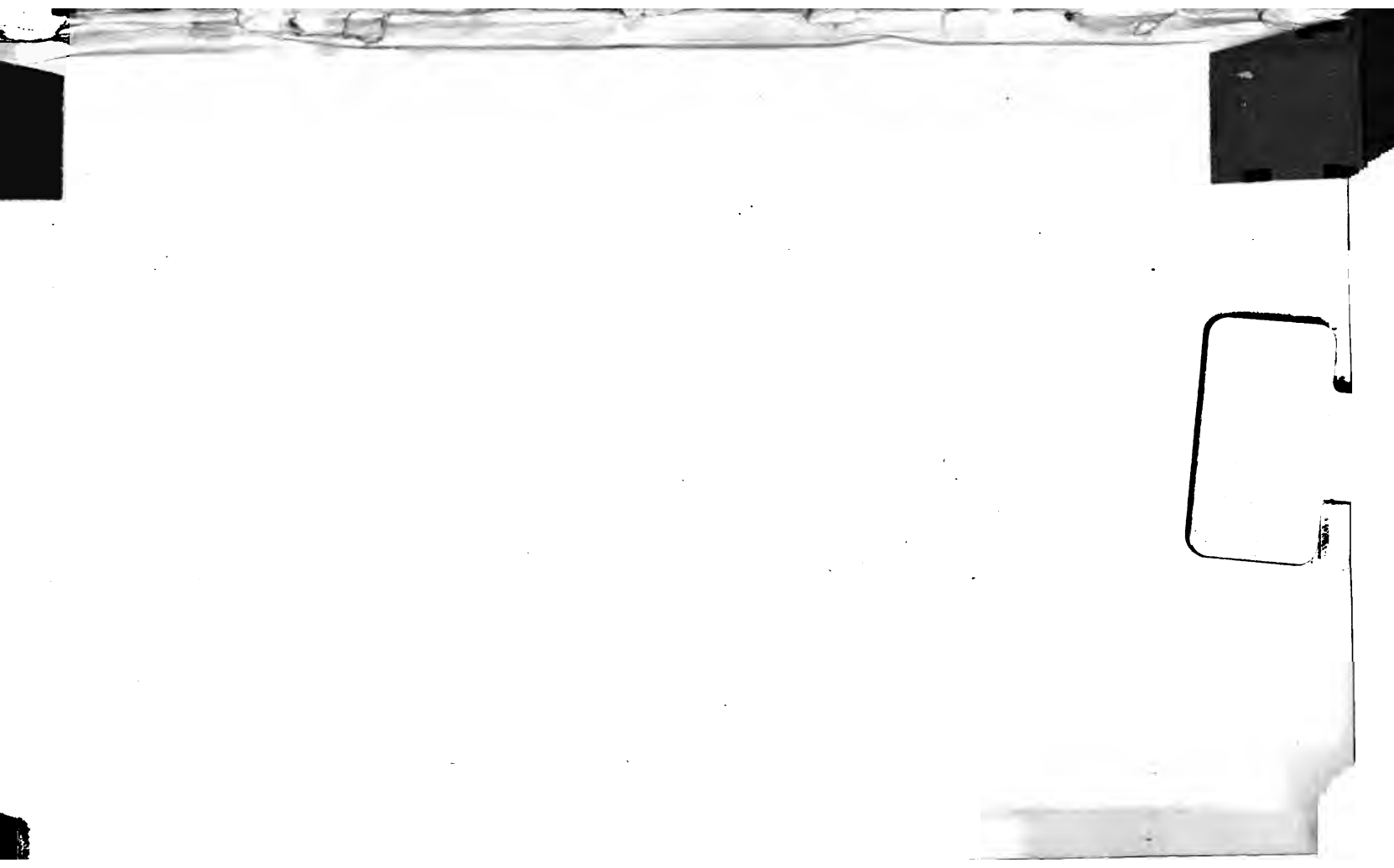

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WORDS AND PHRASES

Interpreted, Defined and Commented Upon

BY THE

SUPREME COURT OF THE STATE OF MONTANA

In its Decisions as found in
Volumes 1-34 of the Montana Reports

COMPILED BY
A. C. SCHNEIDER
A Member of the Bar of Montana

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PREFACE

Believing that a compilation of the words and phrases (both legal and non-legal) which have been the subject of interpretation, definition or comment in the decisions of the Supreme Court of the State of Montana, published in Volumes 1 to 34, inclusive, of the Montana Reports—which latter volume will embrace all opinions filed up to January, 1907,—would be of assistance to the busy practitioner, the compiler commenced this work about two years ago. In order to minimize the possibility of error, the matter herewith submitted has been carefully verified. Wherever the particular word or sentence is part of a section of the Organic or Enabling Act, the Constitution, Codes or Statutes, the section is given. The references to the Montana Reports are to the page or pages on which the word or phrase treated may be found, while the citations to the Pacific Reporter are made to the first pages of the particular opinions.

The hope for approbation entertained by the compiler is based upon the knowledge that his work has been conscientious, most laborious and, in a great measure, one of love. He entered into its preparation well knowing that the sale of the book would practically be limited to the active attorney within this commonwealth, and that in all probability no more than the cost of publication would be realized. He is content, however, if the attorney whose labors are lightened by a reference to the within pages will be appreciative of the efforts put forth in its preparation and overlook any errors which may have crept into it, although it is confidently believed none will be found.

A. C. SCHNEIDER.

Helena, Montana, January 1, 1907.

WORDS AND PHRASES

A compilation of the words and phrases defined, interpreted or commented upon by the Supreme Court of the State of Montana in its decisions, as published in Volumes 1 to 34, inclusive, of the Montana Reports.

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"**Combine**"—(Constitution, Art. XV.)

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"**Good cause shown**"—for change of venue—

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"**Hearing**"—(Laws 1903, p. 9, 2d extra. session.)

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"**Immediately and expeditiously**"—officers to proceed to arrest offenders—(Laws 1903, Chap. CXI, p. 207.)

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"**Inherent power**" of courts to appoint receiver—

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"**Injunction**" distinguished from "**Restraining Order**"—

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"**In pari delicto, melior est conditio possidentis**"—

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"Judgment"—order to pay alimony—

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"Knowingly or fraudulently" selling lands—(Comp. Stat. 1887, Fourth Div. Sec. 200.)

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"Known" to be valuable mineral land—

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"Known" vein or lode—(U. S. Rev. Stat. Sec. 2333.)

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"Labor" and **"Work"** not synonymous with **"Improvements"** —(U. S. Rev. Stat. Sec. 2324.)

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"Laborers' or mechanics' liens"—(Code Civ. Pro. Comp. Stat. 1887, Sec. 323.)

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"**Legal duty**"—

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"**Legal evidence**" only to be received by grand jury—(Comp. Stat. Third Div. Sec. 145.)

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"**Legal fees**"—

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"**Legal home**" of corporation—

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"**Legal officers**"—

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"**Legal presumption**"—

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"**Liability created by statute**"—tax levied and assessed—(Comp. Stat. 1887, First Div. Sec. 42.)

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"Loss of property" not synonymous with **"Injury to property"**

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"Malconduct in his profession"—attorney's—(Comp. Stat. 1887, Fifth Div. Sec. 106.)

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"Malfeasance"—liability of trustees for—

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"Malpractice"—of attorney—

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"**Manner**" of appointments—(U. S. Rev. Stat. Sec. 1857.)

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"**Manner**" of payment—(Cod. Stat. 1870-71, 634, Sec. 62.)

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"**Material**" amendment of complaint—

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"**Material**" fact proven—omission of word in instruction—

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"**Material**" matters—testifying falsely to—omission of word in instruction—

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"Mechanics and laborers"—(Comp. Stat. Code Civ. Pro. Sec. 323.)

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Territory v. Mackey, 8 Mont. 173; 19 Pac. 395.
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"**Mining co-partners**"—

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"**Mining customs**"—

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"**Mining or milling purposes**"—mineral lands appropriated for —(U. S. Rev. Stat. Sec. 2337.)

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"**Mining partnership**"—

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Territory v. Clayton, 8 Mont. 18; 19 Pac. 293. (Same.)
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"**Misconduct**" of prosecuting attorney—

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"**Mistake**" not equivalent of "**False**"—

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"**Mistake, inadvertence, surprise, and excusable neglect**"—(Comp. Stat. 1887, Div. 1, Sec. 116.)

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"**Money**"—

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Territory v. Rowand, 8 Mont. 435; 20 Pac. 688.
Territory v. Johnson, 9 Mont. 27; 22 Pac. 346.
State v. Baker, 13 Mont. 161 et seq.; 32 Pac. 647.
State v. Sloan, 22 Mont. 302; 56 Pac. 364.

"**Must**"—

State ex rel. Murphy v. Judge, 10 Mont. 406; 25 Pac. 1053.
In Re Ming, 15 Mont. 95; 38 Pac. 228.
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State v. Dotson, 26 Mont. 311 et seq.; 67 Pac. 938. (Penal Code, Sec. 2442.)

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"**Natural**" condition of a stream—

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"**Natural object**"—location of mining claim with reference to.

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"**Necessary**"—earnings of laborer exempted when—(Comp. Stat. 1887, First Div. Sec. 321.)

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"**Necessary**" public use—(Comp. Stat. 1887, First Div. Sec. 601.)

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"**Necessarily traveled**"—miles—

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"**Negotiable instrument**"—

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"**Newspapers**" for "**Papers**"—received by jury—

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State ex rel. Heinze v. Dist. Court, 28 Mont. 235; 72 Pac. 613. (Code Civ. Pro. Sec. 1170.)

"**Next preceding the election**" for "**Preceding the election**"—(Political Code, Secs. 4722, 4752, 4753.)

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"**Nice**"

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"**No appropriation * * shall be made**"—(Constitution, Art. XII, Sec. 12.)

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"**Non-resident**"—foreign corporation—

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"**Nonsuit**"—granting of motion to instruct jury to find for defendant—

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"Offer to prove"—
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"Official duties"—
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"**Or otherwise dispose of**" corporate property—directors of mining corporation may—(Comp. Stat. 1887, Fifth Div. Sec. 492.)

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"**Other officers**"—service of summons upon corporation may be made upon president or—(Comp. Stat. 1887, First Div. Sec. 75.)

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"**Other personal property**"—(Comp. Stat. 1887, First Div. Sec. 188.)

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Osmers v. Furey, 32 Mont. 593; 81 Pac. 345. (Code Civ. Pro. Sec. 691.)

"**Subject to a (deed or) mortgage**"—conveyance of real estate.

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"**Subject to such limitations and regulations as may be prescribed by law**"—appellate jurisdiction of supreme court—(Constitution, Art. VIII, Sec. 3.)

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"**Subject to such regulations as may be prescribed by law**"—working mining claims—(14 U. S. Stat. at Large, Sec. 1, p. 253.)

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"**Subject to the local customs or rules of miners in the several mining districts**"—(14 U. S. Stat. at Large, Sec. 1, p. 253.)

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State ex rel. Anaconda C. M. Co. v. Dist. Court, 26 Mont. 405, 406, 412; 68 Pac. 570; 69 Pac. 103. (Code Civ. Pro. Sec. 1317.)

"**Such other public buildings as may be necessary**"—(Pol. Code, Sec. 4230, Subdiv. 9.)

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"**Such person or association**"—(U. S. Rev. Stat. Sec. 2332.)

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"**Sudden injury**"—instruction on "**heat of passion**"—

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"**Sufficiency**" of a pleading—

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"**Supervisory control**" of inferior courts by supreme court—(Constitution, Art. VIII, Sec. 2.)

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"**Supervisory powers**" of attorney general over county attorneys—(Pol. Code, Sec. 460 et seq.)

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"**Support**"—schools—(Comp. Stat. 1887, Fifth Div. Sec. 1940a.)

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"**Supreme court**"—jurisdiction—(Organic Act, Sec. 9.)

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"**Suretyship**"—

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"**Sworn to and subscribed before me**"—at end of deposition—

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State v. McKinney, 29 Mont. 388; 74 Pac. 1095.

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"**Taxpaying freeholder**"—(Political Code, Sec. 4749.)

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"**Telephone**"—

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"**Tenancy in common**"—

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"**Testament**"—

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"**That there be, and hereby is, granted**"—(13 U. S. Stat. at Large, Sec. 3, p. 369.)

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"**The**" for "**A**" in instruction—

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"**The**" for "**Any**"—in instruction—

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"**The**" canvassing board—(Laws 1883, p. 124.)

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"**The**" county—(Comp. Stat. 1887, Fifth Div. Sec. 444.)

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"**The**" vein—in instruction—where plaintiff denied existence of any vein—

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"**The aggrieved party shall have his action of trespass or trover**"—(Laws 1899, p. 134.)

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"**The appellate jurisdiction of the supreme court extends to all cases at law and in equity**"—(Constitution, Art. VIII, Sec. 3.)

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"**The corporation**"—(Comp. Stat. 1887, Fifth Div. Sec. 697.)

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"**The decisions**"—writs of error and appeals allowed from—(Constitution, Art. VIII, Sec. 15.)

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"**The distance actually traveled**"—(Political Code, Sec. 4590.)

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"**The judge of the court**"—(Code Civ. Pro. Sec. 1821.)

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"**The judges**" of election—(Laws 1883, p. 124.)

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"**The judicial power of the United States shall extend to all cases in law and equity**" etc.—(U. S. Constitution, Art. III, Sec. 2.)

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"**The law favors the diligent and not those who slumber on their rights**"—

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"**Then and there**"—

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"**Thence**"—

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"**The order of service (of notice of appeal) is immaterial**"—(Code Civ. Pro. Sec. 1724.)

Savings Bank v. Joe Klaffki Co., 26 Mont. 385; 68 Pac. 410.

"**The power to tax corporations or corporate property shall never be relinquished or suspended**"—(Constitution, Art. XII, Sec. 7.)

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"**The provisions of this constitution are mandatory and prohibitory**" etc.—(Constitution, Art. III, Sec. 29.)

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"**Thereafter**"—

Board of Comm'rs v. Northern Pac. R. R. Co., 10 Mont. 421; 25 Pac. 1058.

"**Thereby**"—

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"**Thereof**"—

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State v. Gill, 21 Mont. 153; 53 Pac. 184.
Beaudin v. Oregon S. L. R. R. Co., 31 Mont. 249; 78 Pac. 303.

"**There must be an end to litigation**"—

See "Interest reipublicae," etc.

"**The same as in other cases**"—appeals to supreme court—(Organic Act, Sec. 9.)

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"**Time for answering**"—(Comp. Stat. 1887, Div. 1, Sec. 200.)

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"**Time to plead**"—

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"**Title** for "**Property**"—

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"**To do an unlawful injury to the property of the individual threatened**"—(Penal Code, Sec. 911.)

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"**To issue and to hear and determine**" certain writs—the supreme court shall have power—(Constitution, Art. VIII, Sec. 3.)

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"To supreme court from the district courts"—appeals—(Comp. Stat. 1887, First Div. Sec. 444.)

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"To the amount of the value thereof"—(Comp. Stat. 1887, Fifth Div. Sec. 458.)

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State ex rel. Carleton v. Dist. Court, 33 Mont. 146 et seq.; 82 Pac. 789.
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"**Tunnel rights**"—

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"**Ubi jus, ibi remedium**"—

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"**Unappropriated**" land—(Enabling Act, Sec. 19.)

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"**Until the hearing**"—injunction—

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"**Upon payment of costs**"—(Code Civ. Pro. Sec. 1004.)

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State ex rel. Chenoweth v. Acton, 31 Mont. 40; 77 Pac. 299. (Pol. Code, Sec. 1171.)

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"**Valuable**" mineral deposit—(U. S. Rev. Stat. Sec. 2319.)

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"**Valuation**" of property—for taxation—

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"**Vein or lode**"—distinguished from "**Vein or lode mining claim**"—

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"**Veins known to exist**"—(U. S. Rev. Stat. Sec. 2333.)

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"**Verdict contrary to law or evidence**"—(Penal Code, Sec. 2194.)

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"**Vested rights**"—

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Graham v. Great Falls W. P. & T. Co., 30 Mont. 399, 400; 76 Pac. 808.

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Forrester v. B. & M. C. C. & S. M. Co., 29 Mont. 403; 74 Pac. 1088.

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"**Void things are no things**"—

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"**Voluntary payment**" of excessive fees—

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"**Want**" for "**Wish, desire, command,**" etc.

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"**Want of integrity**"—(Comp. Stat. 1887, Second Div. Sec. 59.)

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"**Want of jurisdiction**"—

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"**Want of understanding**"—(Comp. Stat. 1887, Second Div. Sec 59.)

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"**Whatever its terms**"—mortgage not a conveyance—(Comp. Stat. 1887, First Div. Sec. 371.)

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"**When allowed by law**"—lien on personal property—(Civil Code, Sec. 4491.)

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"**Where the business of the company is carried on**"—(Comp. Stat. 1887, Fifth Div. Sec. 460.)

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"**Where the reason is the same, the rule should be the same**"—

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"**Where there is no agreement as to the rate thereof**"—interest —(Laws 1864, Sec. 2, p. 535.)

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"**Who may be entitled to mileage**"—(Political Code, Sec. 4590.)

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"**Whore**"—

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"**Wildcat**" mining corporations—

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"**Will**"—

Barney v. Hayes, 11 Mont. 575; 29 Pac. 282.

"**Wilfully, deliberately**" etc.—in indictment—

Territory v. Godas, 8 Mont. 352; 21 Pac. 26.

"**Wilfully**" testifying falsely—omission of word in instruction —(See, also, "**Knowingly**" and "**Intentionally**".)

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State v. Lee, 34 Mont. —; 87 Pac. —.

"**Wilfully, unlawfully, maliciously and feloniously**"—in indictment—

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"**Winze**"—

Cambers v. Lowry, 21 Mont. 480; 54 Pac. 816.

"**With all appurtenances**"—conveyance—includes water right.

Sweetland v. Olsen, 11 Mont. 29; 27 Pac. 339.

"**With costs of prosecution**"—fine or imprisonment—(Comp. Stat. 1887, Crim. Act.)

State v. Sullivan, 9 Mont. 494; 24 Pac. 23.

"**Within a specified time**"—inspection of mining property—(Code Civ. Pro. Sec. 1810.)

State ex rel. B. & M. C. C. & S. M. Co. v. Dist. Court, 30 Mont. 216; 76 Pac. 206.

"**Within note**"—

Clark v. Marlow, 20 Mont. 256; 50 Pac. 713.

"**Within one year after the entering of the judgment**"—appeal—(Code Civ. Pro. Sec. 421.)

Parrott v. Kane, 14 Mont. 27 et seq.; 35 Pac. 243.

"**Within the scope of his authority**"—acts of agent—

Herbert v. King, 1 Mont. 482.

"**Without prejudice**"—application to discharge attachment denied—

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"**Without prejudice**"—dismissal of action—

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"**With respect to a receivership**"—orders—(Laws 1899, p. 146, Subdiv. 2.)

State ex rel. Heinze v. Dist. Court, 28 Mont. 233; 72 Pac. 613.

"**Witnesses**" to will—

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"**Work**" and "**labor**" on mining claim, not synonymous with '**Improvements**"—

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"**Wrong**"—

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"**Wrongful act**"—

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"**Wrongfully, arbitrarily and in disregard of duty**"—exercising discretionary powers—

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"**Wrongful suing out of attachment**"—

Langstaff v. Miles, 5 Mont. 554; 6 Pac. 356.

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"**Yearling**" heifer—

Milligan v. Jefferson County, 2 Mont. 546.

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